

(1975) 08 KAR CK 0004
In the Karnataka High Court
Case No : Writ Appeal No. 242 of 1975

The Ideal Homes Co-operative Building Society Ltd.,
Bangalore

APPELLANT

Vs

P.I. Joseph

RESPONDENT

Date of Decision : 18-08-1975

Acts Referred:

Constitution of India, 1950 — Article 226
Karnataka Co-operative Societies Act, 1959 — Section 70, 70 (2) (c)

Citation : AIR 1976 Kar 1 : (1976) ILR (Kar) 75 : (1975) 2 KarLJ 312

Hon'ble Judges : D.M. Chandrashekhar, J;B. Venkataswami, J

Bench : Division Bench

Advocate : G.R. Doreswamy, for the Appellant; M.G. Narasimhaswamy, for Raghupati, for the Respondent

Judgement

B. Venkataswami, J.—This appeal is by a Co-operative Society against an order of Jagannatha Shetty, J. in W. P. No. 6344 of 1974 (Kant) whereby a writ in the nature of certiorari had been issued, quashing the order of rejection of the nomination of the petitioner by the Society with a further direction to accept the same and proceed with the election to the Board of Directors of the Society.

2. The facts briefly, are as follows:

In connection with the election to the Board of Directors of the Ideal Homes Co-operative Building Society (for convenience, referred to as "Society"), the respondent herein had submitted his nomination. On an objection by a member, by name Vedavalli, to the effect that the respondent had directly or indirectly an interest in a contract between the Society and a firm by name Bangalore Builders Private Ltd., of which he was the Managing Director, and also on account of a pending litigation between the said firm of builders and the Society, his nomination stood rejected. Aggrieved by the said action, the respondent approached this Court under Art. 226 of the Constitution for the issue of appropriate writ or direction quashing the said order of rejection and for

acceptance of his nomination.

3. The petition was contested on behalf of the Society on the ground that such rejection was proper and that the case was not a fit one for the exercise of the discretionary Jurisdiction of this Court in that the petitioner had a speedy, adequate and efficacious alternative remedy u/s 70 of the Karnataka Co-operative Societies Act, 1959 (hereinafter referred to as the Act).

4. The learned Single Judge, in effect, came to the conclusion that the Managing Director of the firm of builders referred to was a distinct and separate entity from the firm as such and, therefore, the respondent could not be said to be a person who had any interest in any contract between the Society and such firm. He, therefore, concluded that the rejection of nomination complained of was on account of an error of law apparent on the face of the record. In this view, he rejected the other contention urged on behalf of the Society based on the alternative remedy available u/s 70 of the Act and issued the writ and direction as prayed for. Hence this appeal by Society.

5. On behalf of the appellant, it was contended as follows: The conclusion of the learned Judge as to the nature of the interest possessed by the respondent in the Bangalore Builders had been arrived at without taking into account all the facts and circumstances bearing on the issue. At any rate a clear and detailed investigation of all such facts and circumstances was called for, which could only have been possible in a regular enquiry held for the purpose u/s 70 of the Act, thus enabling the parties to adduce oral and documentary evidence for and against such an objection. Further, the contents of the objection statement of Vedavalli was neither detailed nor conclusive enough. In any event, the material already on record would warrant a conclusion that the respondent had indirectly at least sufficient interest in the contract between the Society and the firm of builders, thus entailing his disqualification to stand for the election in question.

6. It was further urged that in view of enunciations contained in certain decisions of Division Benches of this Court, to which we shall presently advert, the respondent ought to have been non-suited and petition dismissed.

7. On behalf of the respondent, it was submitted that the writ issued had almost been rendered infructuous in that the next election to the Board of the Society would be held in the next month (September, 1975) and, therefore, no useful purpose would be served in holding any other election just about one month prior to it. In substance, this submission would imply that if the nomination of the respondent were accepted for the next election having regard to the law enunciated in the order impugned, the respondent would have no objection if the writ issued herein were not complied with. On the question of the existence of an alternative remedy under the Act, thus rendering it unnecessary to exercise the discretionary jurisdiction of the Court, under Art. 226 of the Constitution, it was contended that the availability of an alternative remedy, even if adequate and efficacious, would not be decisive each case having to be examined on its own

special facts and circumstances. It was also urged that the error of law in the instant case, as noticed by the learned Single Judge being one plainly apparent on the face of the record, afforded sufficient justification for the exercise of the jurisdiction by the Court as it would clearly exclude any detailed enquiry being held. On the further question whether a writ under Article 226 of the Constitution could at all issue against a Society, which was neither a Statutory body nor a Public Authority, it was simply submitted that the practice of this Court had always been to entertain such petitions against Co-operative Societies, as evidenced by some of the decisions.

8. On giving our careful and anxious consideration to the matter we are clearly of the view that this appeal should succeed, having regard to the authorities cited on behalf of the appellant, nothing to the contrary having been shown on behalf of the respondent.

9. In the case of *Lingan Gouda Siddan Gouda Patil v. Returning Officer in Karnataka Central Co-operative Bank*. (1963) 1 Mys LJ 204, a Division Bench of the Court, held, inter alia, that any and every type of dispute arising in connection with an election of any office bearers in Section 70(2)(c) of the Act was wholly within the Purview of Section 70 and had to be dealt with as provided therein and all questions of fact and law could be gone into in a proceeding under the said section and where disputed questions of fact were involved a reference under the said section was more appropriate remedy. It is also observed therein thus:

"Now there can be no doubt that an election referred to in Section 70(2)(c) (which includes an election to the membership of the Managing Committee) being one necessary for the due conduct of affairs of a Society, the election itself may rightly be described as one of the affairs of the society." (Underlining is ours).

But, for the purpose of application of the above mentioned principles. we do not propose to examine whether in this case such disputed facts exist necessitating an enquiry u/s 70 of the Act, as in our view, having regard to the statement of the law in the case of *T. S. Iyengar v. Deputy Registrar of Co-operative Societies*. Mandya, W A. 264 of 1974 decided on 17-4-1974) (Kant), the Petition filed as it is under Art. 226 of the Constitution would, not lie against the Society which is a body constituted under the Act. However, we must observe that this point had neither been raised nor argued before the learned, single Judge.

10. In the above mentioned case, a Division Bench of this, Court has enunciated the position thus:

"We asked, Sri B. M. Krishna Bhat, learned counsel for the appellant, as to how a writ petition is maintainable against orders of a society registered under the Co-operative Societies Act. It is not a statutory body nor does it perform any statutory functions. The learned counsel brought to our notice the decision of this Court in *K. S. Siddappa v. The Assistant Registrar of Co-operative Societies*. In

the said case, the question was not raised and it was never decided. It is now well settled that petitions under Article 226 are not entertained against non-statutory authorities or bodies. So the writ appeal is wholly misconceived and ill-advised," (Underlining is ours).

11. In further support of such a view, our attention was invited to a decision of the Madras High Court in *C. Lakshmiah Reddiar Vs. The Sri Perumbadur Taluk Co-operative Marketing Society Ltd.*, in which a similar question had been raised and decided. After referring to the enunciations occurring in *Rex v Electricity Commr.* (ILR (1924) KB 171), and *R. v. Disputes Committee of Dental Technicians* [(1953) 1 All ER 327], Rajamannar. C. J., speaking for the Bench, has observed thus:-

"..... In the case before us the proceedings sought to be quashed were the proceedings of a meeting of the Board of Directors of a Co-operative Society. The Board in considering the objections to the nominations for the election of members of the Board of Directors is not a statutory Tribunal with authority to determine the rights of parties. No doubt, the Directors at a meeting of the Board discharged the functions entrusted to them by the Regulations, but these Regulations are framed by the Society itself and have no statutory force. Clearly, therefore an order of this Court under Art. 226 of the Constitution cannot issue to quash the proceedings of such a body." (Underlining is ours).

12. In the light of the above principles, we hold that the present petition under Art. 226 of the Constitution would not lie against the appellant-Society.

13. In the result, this appeal succeeds and is accordingly allowed. Consequently, and in reversal of the order under appeal, we dismiss W. P. 6344 of 1974 (Karna.) but without costs.

14. Appeal allowed.